

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SANJAY BHATNAGAR,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Case No. [14-cv-00327-MEJ](#)

**ORDER RE: PLAINTIFF'S REQUEST
FOR ADVISORY JURY**

The parties are not entitled to a jury trial in this Federal Tort Claims Act ("FTCA") action. *See United States v. Neustadt*, 366 U.S. 696, 701 n.10 (1961). During oral argument on Defendant's Motion for Summary Judgment, Plaintiff Sanjay Bhatnagar nonetheless requested the Court try the action with an advisory jury pursuant to 28 U.S.C. § 2402 and Federal Rule of Civil Procedure 39(c). Defendant the United States of America opposed the request.

District courts in several circuits have used advisory juries in FTCA cases upon finding one would be helpful and appropriate, most frequently when a jury already would be required because the plaintiff also asserted claims against a non-governmental defendant. *See, e.g., Hamm v. Nasatka Barriers Inc.*, 166 F.R.D. 1, 3 (D. D.C. 1996) (same jury already would be hearing claims against non-government defendant, and it would be more confusing to instruct jury to ignore some pieces of evidence; "the Court 'would be reluctant to use an advisory jury in a[n] [FTCA] case if a trial jury were not already trying the case as to other defendants'" (quoting *Poston v. United States*, 262 F. Supp. 22, 24 (D. Haw. 1966) and citing cases holding Rule 39(c) gives "district courts discretion to use an advisory jury in FTCA cases")); *Carter v. United States*, 2009 WL 1956474, at *1 (D. Kan. July 7, 2009) ("Courts routinely empanel advisory juries in actions brought against both the United States and non-federal government defendants. In these

cases, because the plaintiff has a right to trial by jury against the non-federal defendant(s), it is often helpful and appropriate to allow the jury to try the claims against the United States in an advisory capacity. Courts have expressed reluctance, however, to abdicate the responsibility placed upon it by Congress when a jury is not already trying non-federal defendants.”); *In re FEMA Trailer Formaldehyde Prods. Liab. Litig.*, 2009 WL 1950743, at *2 (E.D. La. July 2, 2009) (ordering advisory jury on FTCA case where jurors already would be empaneled for other defendants and where trying case against all defendants at once would allow court to abide by Louisiana comparative fault principles); *Aetna Cas. & Sur. Co. v. Dow Chem. Co.*, 44 F. Supp. 2d 870, 881 (E.D. Mich. 1999) (parallel advisory jury proceedings are common in FTCA cases involving non-government defendants (citing *Gould v. Aerospatiale Helicopter Corp.*, 40 F.3d 1033, 1035 (9th Cir. 1994))).

There are no non-government defendants in this FTCA action; therefore no jury will be empaneled as of right to hear any portion of the case. Using an advisory jury in this instance would not contribute to the “just, speedy, and inexpensive determination” of this proceeding. Fed. R. Civ. P. 1. Accordingly, the Court declines to exercise its discretion to impanel an advisory jury here.

IT IS SO ORDERED.

Dated: February 23, 2017



MARIA-ELENA JAMES
United States Magistrate Judge